A&P Brush Mfg. Corp. and its alter ego A&P Diversified Technologies, Inc. *and* Luggage Workers Union, Local 60, New York Joint Boards, affiliated with the International Leather Goods, Plastic & Novelty Workers Union, AFL–CIO. Case 2–CA–28129

March 28, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On August 13, 1996, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief, and a reply brief to the General Counsel's answering brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondent, A&P Brush Mfg. Corp. and its alter ego A&P Diversified Technologies, Inc., Bronx, New York, and Metuchen, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Luggage Workers Union, Local 60, New York Joint Boards, affiliated with the International Leather Goods, Plastic & Novelty Workers Union, AFL–CIO, as the exclusive representative of their employees in the following appropriate collective-bargaining unit:

All employees engaged in the production of its products, excluding office and clerical employees, supervisors, management, officers and salesmen.

(b) Refusing to honor the terms and conditions of the collective-bargaining agreement with the Union which expired on December 31, 1995.

(c) Refusing to pay severance pay upon the moving of their operations from New York to New Jersey.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the collective-bargaining agreement between A&P Brush Mfg. Corp. and the Union retroactively and prospectively until such time as proper and timely notice of cancellation is given in the manner set forth in the collective-bargaining agreement.

(b) On request, recognize and bargain with the Union as the exclusive representative of the employees in the unit covered by the agreement concerning terms and conditions of employment.

(c) Make whole the unit employees by transmitting the contributions owed to the Union's health and welfare, pension, and other funds pursuant to the terms of the collective-bargaining agreement with the Union, and by reimbursing unit employees for medical, dental, or any other expenses ensuing from its unlawful failure to make such required contributions.

(d) Make whole the unit employees for any wages lost, and severance pay not paid, as a result of their failure to comply with the terms of the collective-bargaining agreement.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Metuchen, New Jersey, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other

[1] In its exceptions, the Respondent argues that the Union altered the terms of the severance pay provision in the collective-bargaining agreement and that the altered provision has been included in subsequent agreements. The Respondent asserts that the severance pay provision in the 1982 contract was mysteriously changed by the Union, without the Respondent's knowledge or consent, to reduce the number of years required to qualify from 10 to 5 years. The Respondent signed the agreement with the 5-year provision and has signed successor agreements with the same provision. In these circumstances, we find that it is appropriate to order the Respondent to comply with the collective-bargaining agreement as written.

In support of its exceptions to the judge's finding that there is substantially identical ownership, the Respondent asserts that the judge failed to find that the note and mortgage personally guaranteed by Gertrude Krantz for her son Mark Krantz was only for a total of 180 days. Although we agree that the note is for a term of 180 days, we find that the limited term does not affect the judge's finding, which we adopt, that there is substantially identical ownership of the Respondents' assets.

[2] We shall modify the judge's recommended Order in accordance with our recent decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its expense, a copy of the notice to all current employees and former employees employed by the Respondent at all times since January 24, 1995.

(g) Within 21 days after the service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to recognize and bargain with Luggage Workers Union, Local 60, New York Joint Boards, affiliated with the International Leather Goods, Plastic & Novelty Workers Union, AFL–CIO, as the exclusive representative of our employees in the appropriate collective-bargaining unit.

> All employees engaged in the production of our products, excluding office and clerical employees, supervisors, management, officers and salesmen.

WE WILL NOT terms and conditions of the collective-bargaining agreement with the Union which expired on December 31, 1995.

WE WILL NOT refuse to pay severance pay due to the moving of our operations from New York to New Jersey.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the collective-bargaining agreement between A & P Brush Mfg. Corp. and the Union retroactively and prospectively until such time as proper and timely notice of cancellation is given, in the manner set forth in the collective-bargaining agreement.

WE WILL, on request, recognize and bargain with the Union as the exclusive representative of the employees in the unit covered by the agreement concerning terms and conditions of employment.

WE WILL make whole the unit employees by transmitting the contributions owed to the Union's health and welfare, pension, and other funds pursuant to the terms of the collective-bargaining agreement with the Union, and by reimbursing unit employees for medical, dental, or any other expenses ensuing from our unlawful failure to make such required contributions.

WE WILL make whole the unit employees for any wages lost, and severance pay not paid, as a result of our failure to comply with the terms of the collective-bargaining agreement.

A&P BRUSH MFG. CORP. AND ITS ALTER EGO A&P DIVERSIFIED TECHNOLOGIES, INC.

Mindy Landow and Olga Torres, Esqs., for the General Counsel.
Mark Krantz, Esq., for the Respondents.
David Greenwald, Esq. (Lewis, Greenwald, Clifton & Lewis), New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge and a first amended charge filed on January 24 and March 24, 1995, respectively, by Luggage Workers Union, Local 60, New York Joint Boards, affiliated with the International Leather Goods, Plastic & Novelty Workers Union, AFL–CIO (Union), a complaint was issued against A&P Brush Mfg. Corp. (Brush) and its alter ego A&P Diversified Technologies, Inc. (Diversified) (or Respondents) on May 31, 1995. Thereafter, on December 12, 1995, an amended complaint was issued against Respondents.[1]

The amended complaint alleges essentially that Brush had a collective-bargaining agreement with the Union, which expired in December 1995, and that in March 1995 Brush began to conduct its operations through Diversified, its alter ego, in order to evade the terms of the contract, and failed to maintain and give effect to the contract by failing to pay severance pay as provided in the contract.

Respondent's answer denied the material allegations of the complaint and set forth certain affirmative defenses, including that the Union did not timely file a charge or a grievance regarding these allegations.

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

Brush, a New York corporation having an office and place of business at 2417 Third Avenue, Bronx, New York, has been engaged in the business of manufacturing paint brushes. Annually, Brush derives gross revenues in excess of $50,000 from the sale of goods to businesses located outside New York State.

[1] Respondents' assertion that the amended complaint must be dismissed because Diversified was not served with a copy of the charges is rejected. In view of the result here that Diversified is the alter ego of Brush, the interests of alter egos are identical and service on one company constitutes service on the other. *Sturdevant Roofing Co.*, 238 NLRB 186, 187 (1978), enfd. 636 F.2d 271 (10th Cir. 1980).

Diversified, a New Jersey corporation having an office and place of business at 200 Forrest Street, Metuchen, New Jersey, has been engaged in the business of manufacturing paint brushes and paint rollers. Based on a projection of its operations, and in conducting its operations, Diversified will annually sell and ship from its New Jersey facility goods valued in excess of $50,000 directly to businesses located outside New Jersey.

Based on the above, I find that Brush and Diversified are, and have been at all material times, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Ivan Borgos, the president of the Union, testified that the Union has collective-bargaining agreements with employers including one with Brush; negotiates contracts in behalf of the employees it represents; establishes working conditions in the shops it represents; handles grievances of employees; and provides employees with health care through its health and welfare fund. Borgos further stated that employees participate in the Union by being eligible to join a negotiating committee which participates in the negotiation of collective-bargaining agreements, and by ratifying such agreements.

Based on the above, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The main issue is whether Diversified is the alter ego of Brush. Essentially, Brush, a Bronx company, operated with a union contract for many years. It ceased doing business as Gertrude Krantz, its elderly owner, sought to leave the business. Her son Mark, who had been an officer of Brush and the person who ran its day-to-day affairs, sought an opportunity to open his own business and did so as Diversified, in New Jersey.

1. The operations of Brush

In 1972, Brush was purchased by two brothers, Jacob Krantz and Lawrence Krantz. They operated the business together until 1984, when Lawrence sold his share of the business to Jacob who became president.

Mark Krantz (Krantz), Jacob's son, joined the business in 1984, at which time he ran its day-to-day affairs and was vice president of Brush and its salaried employee. Krantz was not a shareholder in Brush, and had no ownership interest there. Jacob retired in 1989 because of illness.

In about 1989, Gertrude Krantz, Jacob's wife and Mark's mother, became president, and Jacob's stock was transferred to her. She was the sole owner of the stock of Brush, but was not involved in the day-to-day operation of Brush, and "rarely" visited the facility due to the illness of her husband. She did not personally supervise the work of the employees. Krantz did that, and also supervised the daily operations of the facility. However, Gertrude Krantz did come to the factory when clerical employees were sick or quit, and she trained new office workers. Krantz consulted her when certain "major" decisions had to be made. If money was needed for the Company's operations, she provided it.

Brush has recognized the Union as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

> All employees engaged in the production of its products, excluding office and clerical employees, supervisors, management, officers and salesman.

The Union has had collective-bargaining agreements with Brush since at least 1975, the last expiring on December 31, 1995.

Union President Borgos testified that he negotiated the contracts with Krantz, and that Gertrude Krantz never participated in contract negotiations or grievance handling. However, he did see her occasionally when he visited the shop. Krantz signed, as employer, the memoranda of agreements with the Union for the periods 1989–1992 and 1993–1995.

Similarly, brushmaker employee Anna Goodwin, who also serves as the Union's shop steward, testified that she discussed grievances with Krantz, and that she had no occasion to deal with Gertrude Krantz. However, Goodwin observed that Gertrude Krantz came to the shop on various occasions to interview and train new clerical employees, and to substitute for other clericals when they quit their employment. Goodwin further stated that Krantz, who was at the facility every day, gave her orders and gave instructions to her supervisor. She also stated that Krantz negotiated the last two collective-bargaining agreements on behalf of Brush.

Krantz and Gertrude Krantz testified that she was present at the negotiation sessions, and that she urged her son to be more liberal in granting benefits.

Krantz dealt with Brush's customers and its suppliers. He made purchasing decisions and bought supplies for the Company.

Goodwin testified that in June 1993 Krantz told her that he was buying the assets of Brush from his mother, that he had looked at some property in New Jersey to purchase, and was planning to move in about September. He said that he wanted Goodwin to work for his new company, but that if she was thinking about "starting a union" there, she should "forget about it." Krantz told her that one reason he did not want a union was that he was at a great disadvantage with other shops which were not organized.

Borgos conceded that Krantz had complained to him over the years that the Union had not organized his competitors. Borgos testified that he has heard regularly, since 1986, that Krantz was closing or moving. The Union did not file a grievance over the move of the Company from the Bronx to New Jersey.[2]

In addition, Krantz told Goodwin that employees of Brush would not receive severance pay, and the employees of the new company would not receive all the paid holidays they enjoyed at Brush.

2. The formation and operation of Diversified

In June 1994, Krantz formed two corporations: Diversified and A&P Diversified Technologies Realty (Realty). He is the sole shareholder and president of both. At the time of their formation, Gertrude Krantz was vice president and treasurer of both, but never received a salary by virtue of those posi-

[2] I reject Respondents' assertion that the complaint is barred because no grievance was filed by the Union over the move. The Board has the power to remedy violations of unfair labor practices, and it is therefore irrelevant that no grievance was filed. It would have been futile to have filed such a grievance since Krantz has rejected the collective-bargaining process.

tions. Krantz testified that the sole reason she was an officer was so that she and her husband would receive medical insurance through the Company which, due to their poor health, they would otherwise not be able to obtain. Gertrude Krantz resigned her offices in both corporations 1 year later, on May 1, 1995, prior to the start of Diversified's manufacturing operations.

In October 1994, Diversified entered into a contract of sale with Gertrude Krantz. The agreement, which was executed by Mark and Gertrude Krantz, provides that Diversified will purchase machinery with a value of $165,000, and inventory and supplies with a value of $650,000 for a total price of $815,000 from Gertrude Krantz who would receive the property in a "complete liquidation of Brush," and then sell it to Diversified.

The agreement provides, in material part, as follows:

> Upon closing, the buyer shall execute for the benefit of the seller a note and security interest in the sum of $815,000, which note shall be for a 20 year period, and will require that repayment of principal start in the tenth year. The note shall carry a simple interest rate of 5%, which interest shall be due and payable yearly except . . . that for the first 2 years of the note, interest shall be earned but not have to be paid. The first 2 years interest shall be added to the principal and the repayment of this interest shall start in the tenth year along with the principal.

Krantz testified that the purchase price of the assets constituted the fair market value. He stated that the provision relieving him of paying interest for the first 2 years was designed to help his cash flow situation during the startup phase of Diversified.

The provision requiring that principal begin to be paid 10 years after the agreement was executed was designed to be implemented pursuant to his mother's estate plan, according to which the payments of principal would be distributed by the terms of her "last will" to Krantz and his two brothers.

Although the agreement requires that a security interest be executed, none was. Krantz explained that that provision was included because the bank that lent him the money to purchase Diversified's real property in New Jersey required it. However, the bank later decided that it did not need a security interest because the instrument and note would, according to the agreement, be subordinated to the mortgage on Diversified's building. Gertrude Krantz agreed to subordinate the sales proceeds to the bank in consideration of the bank making a loan to Diversified in the amount of $900,000. In addition, Gertrude Krantz (a) pledged her stock in Brush as security for Krantz' loan until the liquidation was complete, (b) subordinated any debt owed to her by Diversified, and (c) agreed individually to guarantee the loan.

The sales agreement between Diversified and Gertrude Krantz further requires that as a condition to the closing Brush adopt a plan of liquidation, and that it liquidate its assets to Gertrude Krantz. However, Brush did not file a certificate of dissolution with the New York Secretary of State, nor did it file such a plan of liquidation, but it approved a resolution to liquidate. Accordingly, Brush is still considered an active New York corporation. Krantz testified that a plan of liquidation was not necessary because the assets were all liquidated to Gertrude Krantz.

Krantz stated that Brush was not liquidated because it believed that its debtors would not pay their debts if they knew that Brush had been dissolved.

Gertrude Krantz bore the cost of delivering the property to Diversified, and none of the liabilities of Brush were purchased. According to Krantz, she was "stuck with them." Krantz testified that Brush had other inventory, not covered by the agreement, which had not been purchased by Diversified, but is being stored at Diversified's property, awaiting liquidation. The amounts received from such liquidation will go directly to Gertrude Krantz.

Prior to early December 1994, Borgos had been told that Krantz mentioned that he intended to move the shop, but Borgos had heard nothing definite. On December 9, 1994, however, Goodwin told Borgos that she had heard that the plant would be closing or moving. On December 11, Borgos called Krantz and asked about the status of the shop. Borgos testified that Krantz told him that he was "planning to move." One week later, Krantz told Borgos that he bought the assets of the Company from his mother, and he would move the Company.

About 2 weeks later, in early January 1995, Borgos called again and asked for written confirmation of the move. Krantz replied that he was closing the Company. Borgos replied that Krantz had a contract with the Union, and that even if the shop was moved, he was still bound by the contract. Krantz replied that the contract would not apply since Brush was being closed and was not moving.

Krantz testified that he told the employees in January that Brush would close in late March. Goodwin stated that that announcement occurred in February.

On February 22, Borgos sent a letter to Krantz, asking that he negotiate with the Union concerning the effects on the employees of the relocation of Brush, and demanding that the Company make severance payments to its employees pursuant to the collective-bargaining agreement, which states:

> It is agreed that in the event the Company moves its manufacturing operations from its present location, 2417 Third Avenue, Bronx, New York, to any area outside the New York City limits, then the Company shall grant a severance pay benefit which shall be equal to one week's average wages per year, for each year of service rendered.

On March 7, Krantz prepared a reply, signed by Gertrude Krantz, which stated, inter alia, that in an October 1994 conversation, Krantz told Borgos that Brush would be liquidated, and that he did not intend to have the Union represent the employees of Diversified. The letter further stated that Brush would cease doing business as of March 31, 1995, and was not relocating, but instead was liquidating. Gertrude Krantz further stated that since Brush was liquidating, and not moving, it had no obligation to pay severance pay to its employees.

On March 23, a meeting was held at Brush attended by Krantz, Gertrude Krantz, Borgos, the Union's attorney, and Goodwin. The Union requested severance pay and vacation pay for the employees. Krantz agreed to give postdated checks for vacation pay, but the Union refused, because

checks recently issued to the workers were not honored due to insufficient funds in Brush's account. Krantz repeated his objection to paying severance pay, stating that he was not obligated to do so because Brush was closing and not moving. The Union did not file a grievance over Brush's failure to pay severance pay.

Krantz conceded telling Borgos that he did not intend to have a union at Diversified. His reasons were that the Union did not organize his competitors, showed no interest in the employees, Borgos rarely visited the shop, and that it had been negligent in providing medical cards to employees who, as a result, were allegedly denied treatment at the Union's medical facility.

The last day of work at Brush was March 29, 1995. Prior to the close, Krantz told Goodwin that if she agreed to work for Diversified in New Jersey, Krantz would give her a $15 per week raise in addition to the $12 per week contractual raise she had received in January. Krantz also offered to provide transportation to New Jersey. Goodwin at first declined the offer, and was unemployed for about 2 months. She then accepted, and began work in June.

3. Diversified's operations

Diversified began its operations in a new building in Metuchen, New Jersey, in late May, 2 months after Brush closed. Krantz' reasons for operating in New Jersey was motivated by his dissatisfaction with doing business in New York: the high crime rate in the area in which Brush was located, and the high cost of electricity and taxes.

At the time of the hearing, Diversified manufactured paint brushes only. Krantz testified that it will soon be manufacturing paint rollers. He further stated that he is changing the product line to include making a brush with nylon bristles, and a roller having an inflatable core.

Krantz also testified that he has purchased new equipment such as new racks, tables, a pad printing machine, and a nailing machine.

Krantz stated that the industry is such that there is a limited number of suppliers of raw materials for the Company's products. However, Diversified purchases supplies from at least one supplier that Brush dealt with. Goodwin stated that Diversified's largest customer is Custom Brush, which was Brush's major customer also.

Of the approximately 15 employees at Brush, Krantz hired 3 to work at Diversified, including Goodwin, George Brown, and Charles Robles. Diversified pays for their transportation to and from work. A total of 10 employees work at Diversified.

Goodwin, a brushmaker at both Brush and Diversified, testified that she makes brushes in the same manner at both locations. Her immediate supervisor at Brush and now at Diversified is Brown. Krantz stated that Brown's job has expanded at Diversified, where he acts in a greater supervisory role. Robles was a shipping clerk at Brush and works in the same capacity at Diversified.

Goodwin received the raise promised by Krantz, and Diversified does not pay for holidays which were eliminated, which include the employee's birthday, Veteran's Day, Martin Luther King's Birthday, and Lincoln's Birthday. The health insurance provided the employees by Diversified is maintained with a different company than the one given to the workers when they were employed by Brush. Employees are required to work 35 minutes longer at Diversified than they had at Brush, and they do not receive the 10-minute washup time they enjoyed at Brush.

Krantz admitted not discussing with the Union any changes in employees' conditions of employment at Diversified prior to instituting them.

B. *Respondent's Defenses*

Krantz testified that Brush's assets were unsalable in the normal course of business, and would have to be liquidated at a substantial loss to Gertrude Krantz. He estimated that upon liquidation she would receive 20 cents on the dollar. Rather, he paid his mother a fair market value for the assets. Further Krantz, who is a tax attorney, stated that he structured the transaction so that his mother could recognize the substantial loss, in excess of $100,000, incurred by Brush when it overpaid Lawrence Krantz for his stock in 1984. The recognition of this loss now results in a substantial income tax offset for Gertrude Krantz. By liquidating the assets of Brush, Gertrude Krantz realized a $100,000 tax loss that she would not have had if she sold the stock of Brush to him. If she had done that, there would be no depreciation left to deduct. However, by liquidating and selling the assets to Diversified, that company is now able to depreciate those assets.

Krantz further stated that by structuring the sale as he did, he received a stepped-up basis on fully depreciated assets, thus allowing him the tax advantage of deducting this depreciation.

Krantz urges that the sales agreement and the purchase of the New Jersey property, which his mother guaranteed, be viewed as a transaction between family members in which a mother assists her child in his business endeavors, as she had assisted her other children in financing their education and residences. He argues that the transaction concerning Brush was not made to defeat the Union, but for substantial tax reasons.

Respondent argues that Diversified is not the alter ego of Brush because the ownership of the two companies is different. Thus, Krantz was never a shareholder or owner of Brush. It is also argued that Gertrude Krantz has not derived any benefit from, and has no connection with Diversified other than selling her assets and equipment to it, and that prior to the start of Diversified, she resigned as its director, vice president, and treasurer. She simply sold the assets of Brush to Krantz, and gave her personal guarantee to the bank. Krantz stated that any parent who cares about a child would do the same.

Diversified is in a different location from Brush the building at Diversified is much larger than at Brush—nearly three times the size.

1. Analysis and discussion

The complaint alleges that Diversified is the alter ego of Brush. In order to determine whether two facially independent employers are alter egos, the Board utilizes the following factors in *Denzil S. Alkire*, 259 NLRB 1323, 1324 (1982); *Crawford Door Sales Co.*, 226 NLRB 1144 (1976):

> We generally have found alter ego status where the two enterprises have substantially identical management,

business purpose, operation, equipment, customers, and supervision, as well as ownership.

In applying these principles to this case, I find that the General Counsel has established that Diversified is the alter ego of Brush.

The management and supervision of Brush and Diversified reside in Krantz. The evidence is clear that Krantz ran the day-to-day operations of Brush for several years. He hired employees, directly supervised their work and the work of their immediate supervisors, dealt with customers and vendors, and negotiated and signed collective-bargaining agreements with the Union. Similarly, he is solely in charge of the operations at Diversified. Krantz thus controlled the labor relations at both companies. *Merchants Iron & Steel Corp.*, 321 NLRB 360 (1996).

I credit Krantz' testimony that he consulted regularly with his mother concerning major decisions, and that she occasionally prevailed in persuading him to be more generous with the workers, and was present at certain collective-bargaining sessions. Nevertheless the evidence remains that Krantz was in complete control of the supervision and operation of Brush. I also credit Goodwin's testimony, which was corroborated by Gertrude Krantz, that she visited the premises to train office staff, and to substitute for clerical workers when they were absent from work. Further, Goodwin credibly testified that she discussed grievances with Krantz. It is thus clear that Krantz was in charge of Brush's operation, a fact conceded by him.

I conclude that Krantz' management of Brush continued at Diversified. He, of course, was in complete control of Diversified's operations, establishing the business, hiring employees, and determining its course of business. *Advance Electric*, 268 NLRB 1001, 1003 (1984).

As noted above, at the inception of Diversified, Gertrude Krantz was the vice president and treasurer of that corporation, and held those positions for 1 year without salary. I accept Krantz' testimony that this was done so that she and her husband could obtain medical insurance through the company, and would not otherwise have been able to do so. However, this transaction, while certainly legitimate, illustrates that the officers of the two companies continued to be interrelated after Brush ceased its operations. *Merchants Iron & Steel Corp.*, supra at 360, where, in finding alter ego status, an individual was listed as vice president "as a convenience."

Regarding business purpose, operation, and equipment, the evidence supports the conclusion that Brush and Diversified are identical. The purpose of both was to manufacture paint brushes. The equipment and inventory of Brush were purchased by Diversified and are being used there. Although such machinery is being renovated, and new machinery and equipment purchased by Diversified, as testified by Krantz, nevertheless, the business purpose remains the same. In addition, according to the credited testimony of Goodwin, she is making brushes at Diversified in the exact way she made them at Brush.

Despite Krantz' statements that the purpose of the business is changing, through the manufacture of paint rollers and a new type of nylon brush, nevertheless, such changes had not yet occurred as of the time of the hearing, 10 months after the beginning of operations of Diversified. It is therefore clear that the essential business purpose remains the same.

Even assuming the addition of these new products, they are clearly related to the essential business that Brush has done, and accordingly, Diversified's product line would be expanded in a related way, and would not change to any material extent.

Although a majority of Brush's employees were not hired by Diversified, the operation of Diversified was enhanced by Krantz' hire of its three-key employees: Brown, Goodwin, and Robles. Although Krantz testified that the jobs of these skilled employees has been enhanced to some degree, they continue to perform the same tasks. Thus, Goodwin remains a brushmaker, and continues to train other workers. Although Brown has apparently taken on additional supervisory duties, he continues to supervise Goodwin and other workers. Robles continues to work as a shipping clerk. It is clear that Krantz regarded these three individuals as important in a smooth transition from Brush to Diversified, and provided them with substantial raises and free transportation from New York to New Jersey.

Regarding the customers of Diversified, Custom Brush was the major customer of Brush, and continues to be the same for Diversified. *Advance Electric*, supra at 1002. In addition, certain customers of Brush did not continue to be serviced by Diversified only because of Krantz' decision not to continue to sell to customers who did not pay their bills on time.

Regarding ownership, it is clear that Brush and Diversified were separately owned: Brush was entirely owned by Gertrude Krantz, and Diversified is entirely owned by Krantz. Identical corporate ownership is not required in order to establish the alter ego status of those companies. The Board has held that ownership in different companies by members of the same family constitutes substantially identical ownership, sufficient to support a finding of alter ego status. *Kenmore Contracting*, 289 NLRB 336, 337 (1988).

Here, the same family has had extensive involvement in the businesses, which involvement continued in the manner in which Diversified was established. There is some question whether the transaction between Gertrude Krantz and Krantz was an arms-length affair. *Kenmore Contracting Co.*, supra. I credit Krantz' testimony that he purchased the assets of Brush at fair market value, and that the transaction was structured so that Gertrude Krantz would receive certain tax benefits. I agree with Krantz that a parent should help a child in his efforts to start a business.

However, it is apparent that this transaction had as its effect that Gertrude Krantz retained a financial interest in the success or failure of Diversified. Thus, the bank provided financing for Krantz' purchase of the real property of Diversified solely through Gertrude Krantz' pledge of her stock in Brush and her personal guarantee. In addition, certain conditions to the sale have not been satisfied. Brush was supposed to have been liquidated, and the assets transferred to Gertrude Krantz. However, Brush was not liquidated or dissolved. A security interest that was supposed to have been executed by Gertrude Krantz was not. Accordingly, this case involves more than a generous mother assisting her son in getting started in a business. *Fire Tech Systems*, 319 NLRB 302 (1995).

Respondents urge that they should not be penalized because a mother sought to help her child open a business. I agree. However, the cases dealing with family relationships in which no alter ego was found involve completely different facts from this case. Thus, in each such case there was a complete lack of involvement in the succeeding company by the family member who had been a principal in the initial company. *Victor Valley Heating*, 267 NLRB 1292, 1297 (1983); *Shellmaker, Inc.*, 265 NLRB 749, 754 (1982); and *Friederich Truck Service*, 259 NLRB 1294, 1301 (1982). Here, of course, Krantz was the principal in charge of both operations to the virtual exclusion of others.

Another factor which must be considered in determining whether alter ego status is present is "whether the purpose behind the creation of the alleged *alter ego* was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." *Fugazy Continental Corp.*, 265 NLRB 1301, 1302 (1982). The Board does not require, however, that an illegal motive be established in order to find alter ego status. *Johnstown Corp.*, 313 NLRB 170, 171 (1993).

I cannot find that the *purpose* behind the creation of Diversified was to evade its responsibilities under the Act. I credit Krantz' testimony that he wanted to open Diversified in order to be his own boss, create and market his own inventions, and operate his own business in an area away from New York. Nevertheless, it is clear that Krantz did not desire union representation for the employees of Diversified, and told his employees and the Union that fact. *Mining Specialists*, 314 NLRB 268 (1994); *Walton Mirror Works*, 313 NLRB 1279, 1283 (1994).

Thus, from its inception Diversified was intended to and was operated as a nonunion shop, regardless of the impact of the Act or its employees' desires. Indeed, Krantz threatened not to hire Goodwin if she sought union representation. Thus, although there is insufficient evidence to find that the purpose of Diversified's creation was to evade its responsibilities under the Act, I do find that its establishment was effected by, and was coexistent with, a desire to maintain a nonunion operation.

Respondents are correct in asserting that other factors sometimes found in alter ego cases are not present here. Thus, in a typical alter ego case, the new operation continues in business at the same location with no hiatus in its operations. Here, of course, Diversified opened its business in another state, and began operating 2 months after Brush ceased manufacturing.

However, notwithstanding the absence of those factors, I find that the General Counsel has established by a preponderance of the evidence that Diversified is the alter ego of Brush.

2. Respondents other defenses

Respondents allege that the complaint is time-barred by Section 10(b) of the Act inasmuch as the Union and the employees received notice that Brush intended to move or close more than 6 months before the charge was filed. I find this contention to be without merit.

It is well settled that notice to the employees does not constitute notice to the Union. Although Goodwin was apparently told in June 1993, that Krantz was buying the assets of Brush, and intended to move to New Jersey, such a statement to an employee, even the shop steward, does not serve to put the Union on notice of such an action. *Fire Tech Systems*, supra at 305.

In addition, the Section 10(b) period starts to run only when a party is put on notice that a violation of the Act has occurred. The equivocal, vague nature of the statements—Krantz' telling the "em ployees that he was intending to establish a nonunion operation, without stating how or when this entity would commence operations, is not sufficient to provide the Union with the requisite 'clear and unequivocal notice of a violation of the Act.'" *Fire Tech*, supra. Further, although Goodwin was told of the move in June 1993, it was not until 1-1/2 years later, in December 1994, that Union President Borgos was told by Krantz that Brush would be closed and a new company opened. The charge was then timely filed in January 1995.

I accordingly reject Respondents' Section 10(b) defense.

I therefore find and conclude that Diversified is the alter ego of Brush.

CONCLUSIONS OF LAW

1. Respondents A&P Brush Mfg. Corp. and its alter ego A&P Diversified Technologies, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Luggage Workers Union, Local 60, New York Joint Boards, affiliated with the International Leather Goods, Plastic & Novelty Workers Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent A&P Diversified Technologies, Inc. is the alter ego of A&P Brush Mfg. Corp.

4. All employees engaged in the production of its products, excluding office and clerical employees, supervisors, management, officers and salesman constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all material times, pursuant to Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees of Respondent in the above appropriate collective-bargaining unit.

6. By refusing to honor and apply the collective-bargaining agreement between A&P Brush Mfg. Corp. and the Union, the Respondents have violated Section 8(a)(5) and (1) of the Act.

7. The unfair labor practices set forth above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, I recommend that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Inasmuch as I have found that A&P Diversified Technologies, Inc. is the alter ego of A&P Brush Mfg. Corp., the new entity, A&P Diversified is bound to honor the existing contract, and is also bound, in the absence of good-faith bargaining, to continue the terms and conditions set forth in that contract even after its expiration.

Under the Act, an employer may not unilaterally change the terms of employment as set out by the terms of a collective-bargaining agreement, even after the contract expires. The employer is required to maintain the contract's terms

and conditions, including payments to benefit funds (but not the checkoff of union dues), until a new agreement is reached which modifies or terminates such obligations; or until after an impasse is reached in which a company may unilaterally implement some or all of its last contract offer; or until the employer is legally discharged from its obligation to recognize and bargain with the Union. *Lihli Fashions Corp.*, 317 NLRB 163, 165 (1995).

Accordingly, I shall recommend that A&P Diversified be ordered to recognize the Union as the representative of its employees and to honor and apply the terms of that agreement, and any subsequent agreement. I shall also order Respondents to make the contractually established payments to the welfare and pension funds established by the collective-bargaining agreement, with interest, in accordance with the formula set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979); *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981); *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971); and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]